IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 75-647

FOOD HANDLERS LOCAL 425 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, et al.,
Petitioner,

vs.

VALMAC INDUSTRIES, INC.,
Respondent.

APPENDIX TO PETITION FOR CERTIORARI

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(1) RULING OF DISTRICT JUDGE OREN HARRIS ON JULY 12, 1974

The Court: The Court's ready to rule.

In the first place, the Court obviously recognizes that a temporary or preliminary injunction as provided by Rule 65 of the Federal Rules of Civil Procedure and other provisions of law is an extraordinary remedy and should be granted only upon a substantial showing by the plaintiff that it is entitled to such drastic relief. This, of course, makes it very obvious that the burden is on the plaintiff.

[111] As it has been stated, there are certain factors that are necessary, and a showing must be made. This is well established in virtually all, if not all, of the circuits that a preliminary injunction, as an extraordinary remedy, may be granted when there are present factors governing the issue therefor, and generally there are four. (1) Whether the plaintiff has made a strong showing that it will likely prevail on the merits. (2) Whether the plaintiff showed irreparable injury in the absence of such relief. (3) Whether such relief will substantially harm the parties. Some of the courts have held on this factor it has to do with whether or not the defendant in the case would suffer a greater harm by the issuing of a preliminary injunction than would the party seeking the injunction. And the fourth factor which the courts have delineated is the fact that the public interest requires some action to be taken.

In addition to that, as the counsel for the defendants in this case rely upon the Boys Market case which has been referred to, I think it should be noted that this is also a **[112]** very unusual statement of the law by the Supreme Court of the United States because in adopting the rule of the dissenting opinion in the Sinclair case and one of the most extraordinary decisions in which the Court in this opinion, the Boys Market case, has complete change from the rule that is adopted in the Sinclair case

and made it very clear that conditions and circumstances as time goes along that the Court should reconsider its opinion in the Sinclair case and that that case should be dumped, which it was, but in doing so it adopted the dissenting opinion in the Sinclair case and quoted from the dissenting opinion as has been referred to here today, and, of course, that application of the law is whether or not the prohibitive injunction proceedings in the Norris-LaGuardia Act would prevent the District Court—prohibit the District Court from issuing an injunction, and the Supreme Court said the law now is, as it adopted, that notwithstanding the prohibitive provision of the Norris-LaGuardia Act that when these conditions are present as has been referred to, then an injunction would prevail **[113]** notwithstanding the Norris-LaGuardia Act. So, therefore, the Court must make a determination before an injunction can be issued, notwithstanding the Norris-LaGuardia Act. First, a strike is sought to be enjoined because it is over a grievance which both parties are contracturally bound to arbitrate. The Court would not be permitted to issue an injunction unless this fact is present and that it must first hold that the contract has the affect. The employer must be ordered to arbitrate as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must consider whether issuance of an injunction would be warranted under ordinary principles of equity, whether breaches are occurring and will continue, or have been threatened and will be committed, whether they have caused or will cause irreparable injury to the employer, and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.

Now, that is precisely taken from the factors which many, many courts have rendered as to whether the plaintiff shows irreparable injury **[114]** in the No. 2 factor referred to by the Court. And, No. 3, as to whether or not the other parties would be more affected than the party seeking the injunction. So the Supreme Court of the United States in adopting a contrary decision than was in the Sinclair case has reiterated and adopted the factors that are necessary for this extraordinary action to be taken, and, of course, places quite a responsibility on the Court in view of the fact that the Court has discretion whether it will issue an injunction in a matter of these kinds and must find these factors and elements present.

Now, in this case, as has been shown from this hearing, there was an agreement, as has been said, the agreement between the Valmac Industries, Inc., Russellville, Arkansas, and the Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcher Workmen of North America. This provision in this contract will expire, as has been said, on July 29th of this year. I believe that's the proper date. The contract with the Pine Bluff Local expires on October——

[115] Mr. Davis: Fine.

The Court: ——5. Article 5 provides a procedure for the appointment of stewards and for grievances, and it very clearly sets out the steps to be taken which leads to arbitration and requires arbitration. In Article 14, which is identical in both contracts with reference to Waldron and Pine Bluff, provides for a no-strike, no-lockout. "During the whole period this agreement is in effect, the company shall not lock out its employees and the union shall not authorize or sanction any strike, stoppage, slowdown, or suspension of work against the company except for failure of the other party to submit to the arbitration procedure as provided for in Article 5 of this agreement and only then upon 48 hours' written notice to the other party and the other party's continued failure to submit to arbitration." And then Article 15, as relied upon by defendants in this case as their right in the instant case, Article 15 authorizes picket lines. "It shall not be a violation of this agreement for an employee to refuse to pass **[116]** through a picket line authorized by this union." There is some ambiguity there as it applies to the whole contract when you consider four

separate and individual contracts by the particular union as applicable to four places, and the Court should very well take cognizance of the application of this provision. The Court can only interpret this to mean, it says by this union and between the plaintiff and the Waldron, Arkansas, plant, that it would be applicable, of course, to that plant. Now, the testimony here is virtually undisputed that there has been no grievance insofar as the Waldron or Pine Bluff Plants are concerned. Certainly there must be an issue here. There has been no contention that the company has failed to submit to the arbitration procedure, because, as has been said previously, there is nothing between the union and the company to arbitrate as a grievance on either Waldron or Pine Bluff; and, obviously, there have been no notices given to either party as required when the 48-hour written notice is given, because there was nothing to give them notice for. The testimony, in the opinion of the Court, has **[117]** been substantial in this case, not only as to the contracts involved in the two locations, but it's been substantial as to there would be irreparable harm that would come to the company at each of these plants if the injunction had not been issued. All be it, there is only a few days left in one of them, and so that being true insofar as that plant is concerned, the union in the Waldron Plant, of course, when the contract expires may proceed in regular order endeavoring to obtain what they claim and what they feel is their rights as employees of the company in bargaining and trying to arrive at some solution to the problem.

On the other hand, the other plant at Pine Bluff goes until October, that is a while longer, but not very long.

The Court can only conclude that in each of the plants there would be irreparable harm to the operation of the plant —provisions of the contract for no strike, and the Court can only conclude that there will be substantial harm done to if they were permitted in violation of the provisions to strike

[118] other parties, that has been very clear, including employees themselves.

I might interpolate here that I don't think I have ever seen a serious strike that didn't do harm and usually irreparable harm to those involved in the strike when the strike takes place. I don't think there is any question about it as to what will happen at the termination of these contracts with reference to bargaining for additional contract, that is something else, this Court is not involved in that at all.

As to whether or not the union would be harmed in the continuation of the injunction, there is no testimony that has been presented to the Court, and there is nothing here to indicate that there would be substantial harm done, and certainly nothing here to indicate that any harm, if there is any harm, that would be greater than the irreparable harm done to the plaintiff in the case with the continuation of the injunction.

As to the question of the plaintiff being successful on the merits of the case, with the testimony that is presented here, which is **[119]** not rebutted, the Court can only conclude at this point that there is substantial probability that from the record we have here that the plaintiff would be successful in its efforts in the case. That, together with the Boys Market case as has been referred to and which I have quoted from, it is quite apparent that this Court should continue the injunction insofar —the preliminary injunction insofar as applicable to the Waldron Plant and to the Pine Bluff Plant.

It would serve no purpose now for this Court to proceed to again analyze the testimony. You have heard the testimony presented from the witnesses here as well as the Court has heard it, and the record is quite replete. You talk about the Monongahelia case and the apparent conflict with the Fifth Circuit in Texas. The Court can see very well that there are distinguishing features involved in this case involved in the Texas case and the Virginia case. It is quite apparent that the

Monogahelia case was more in keeping with what has been happening insofar as this particular local is concerned. I'm not sure **[120]** that the Monongahelia case, however, that the people who were involved in making the contracts and represented the union individually themselves as they did here escorted the pickets over to the other place for the purpose of setting up picket lines and carrying their difficulties at the other plant over to the plant where the contract was still in force and effect. That seems to me begging the point. When you look at the facts in this case which makes it so clear and undisputed in accordance with the exhibits which have been presented here and the testimony, it's only clear that this strike at Russellville and Dardanelle by the same company and by the same people who participated in the negotiation of all the four contracts for the four complexes carried that part of the difficulties they were having in Russellville and Dardanelle over to the other plants where they were not having the troubles as yet. And, consequently, the Court feels that the preliminary temporary injunction in effect insofar as Waldron is concerned and the Pine Bluff complex will be continued. I have some **[121]** serious reservations about the provisions of this injunctive proceedings, however, as it applies to Russellville and Dardanelle. To be sure, there is some indication that some threats and intimidations and some actions have taken place that cannot be tolerated. There has been nothing, though, in this record or no testimony presented to this Court that could be considered substantial for this Court to use this extraordinary procedure to interfere with the situation regarding that complex. That does not mean to say that the Court would not hesitate to hear any facts that are presented and to consider any situation that might exist that would lead into actual facts where there appear to be harm, threats, intimidations, and such actions as throwing brick and putting nails out in the parking lots where the tires would be injured. That is no way for good citizens to act. There is nothing here to indicate that the union has had anything to do with such activity. Where there are problems develop, there is going

to be somebody—inevitably there will be somebody that is going to **[122]** overstep the limitation. Those, generally speaking, are the kind of situations that the local officers handle and not to call upon the courts to have to deal with them on an individual basis; but I would like to make it very clear, however, if this decision of the Court results in this kind of activity that is going to do substantial harm and interfere with the rights of other people in the destruction of property, I would unhesitatingly entertain further action in that regard. I would like to compliment those who feel that they were impelled, persuaded to overstep the rights and the fact that they have since this injunction has been entered without notice pursuant to the rule that according to the testimony here that that has not continued, and I think it borders on tragedy that you have to take this action by the Court to get people to do what's right in that regard. And even though I'm going to release the injunctive proceedings, Mr. Davis, that includes the actions insofar as this record is concerned applicable to the Russellville and Dardanelle complex, I do want to express **[123]** the hope that nothing as has been indicated happened at the outset with reference to these intolerable actions will occur again.

I believe that just about concludes, then, the decision of the Court in this matter, and you may proceed, Mr. Davis, to prepare the appropriate precedent in line with these comments, conclusions of the Court as to the applicable law, as well as to the facts as I have referred to developed during the course of this trial and submit it to Mr. Lavey for his comments and then to the Court.

Mr. Davis: Yes, sir.

The Court: Anything further, gentlemen?

Mr. Davis: Nothing further.

Mr. Lavey: Nothing further, Your Honor.

The Court: The Court will now be in recess.

(Whereupon, at 4:53 p.m., the Court is recessed.)

(2) **ORDER OF THE DISTRICT COURT ENTERED AUGUST 1, 1974**

Preliminary Injunction

(Filed in U. S. District Court August 1, 1974)

Pursuant to the preliminary injunction order of this Court entered in this case on the 2nd day of July, 1974, this cause came on to be heard on the 12th day of July, 1974, in the United States District Courtroom at Pine Bluff, Arkansas. The plaintiff was present represented by its Vice-President, Don Dalton, various other officials of the Company and its attorney, John A. Davis. The defendant Union was present by its President, Jerry McGehee, various other officials of the Union and its attorneys, John T. Lavey and William Babb. The individual defendants were present in person and represented by their attorneys, John T. Lavey and William Babb. All parties announced ready and this case was submitted upon the Complaint filed herein, the Preliminary Injunction issued on the 2nd day of July, 1974, the Motion to Dismiss Complaint for Injunction and to Dissolve Preliminary Injunction, together with Memorandum in support of same filed by counsel for defendants, the Trial Brief filed on behalf of the plaintiff, the exhibits introduced at the hearing for preliminary injunction, additional exhibits introduced at the hearing, stipulation of the parties testimony of Don Dalton, Charles Hottinger, Charles Rushing, Norbert Flusche and Bill Bollinger, on behalf of the plaintiff, argument of counsel and other facts and matters appearing before the Court, the Court being well and sufficiently advised finds:

1. This is an action for violation of a contract between an employer and a labor organization representing employes in an industry affecting commerce as defined by the Labor Management Relations Act and this Court has jurisdiction over the

subject matter and parties to this action by virtue of Section 301 of the Labor Management Relations Act.

2. The Court finds that the plaintiff and defendant Union are parties to four (4) separate collective bargaining agreements covering certain of the employees at the plaintiff's Russellville, Dardanelle, Pine Bluff and Waldron processing plants. The contracts covering the employees at Russellville and Dardanelle expired on June 29, 1974, and the Union is engaged in an economic strike at those plants, said strike commencing on the 1st day of July, 1974.

3. The Court further finds that on the same date the strike commenced at Russellville and Dardanelle, the defendants commenced or caused to be commenced picketing at the Pine Bluff and Waldron plants and the defendants, together with the employees of the Pine Bluff and Waldron plants engaged in concerted strike activity at those facilities. The Waldron contract is in full force and effect and does not expire, according to its terms, until July 29, 1974. The Pine Bluff contract is likewise in full force and effect and does not expire until the 5th day of October, 1974.

4. The Court further finds that the collective bargaining agreements covering the Pine Bluff and Waldron plants each contain a "no-strike" clause. The clauses in each of the contracts are identical and are numbered Article XIV in each of the contracts and read as follows:

> "During the whole period this agreement is in effect, the Company shall not lock out its employees and the Union shall not authorize or sanction any strike, stoppage, slowdown, or suspension of work against the Company, except for failure of the other party to submit to the arbitration procedure as provided for in Article V of this agreement, and only then after forty-eight (48) hours

written notice to the other party, and the other party's continued failure to submit to arbitration."

5. Both Waldron and Pine Bluff contracts also contain a provision for compulsory arbitration of grievances and such provision is found in Article V of each of the contracts and under Step 4—Arbitration read as follows:

"The matter above described, or any grievance complaint of the Company, shall be submitted to an arbitrator mutually agreeable to the parties. . . ."

6. The Court finds that based on the foregoing facts and the additional findings and conclusions of law stated orally by the Court at the conclusion of the hearing of this matter on July 12, 1974, which oral findings of fact, conclusions of law and statements of the Court are hereby incorporated into this order and made a part hereof by reference thereto, the Court finds that the Temporary Injunction entered by this Court Ex-Parte on the 2nd day of July, 1974, insofar as it enjoins and restrains the defendants from picketing plaintiff's processing plants at Pine Bluff and Waldron and from carrying on concerted strike activity at the Pine Bluff and Waldron processing plants should be continued in full force and effect during the period of time as provided by the contracts between the parties.

7. For the reasons stated orally by the Court at the conclusion of the hearing of this matter on July 12, the Court finds that the injunction against the defendants from threatening or committing acts of intimidation and violence against plaintiff's business property, officers, agents, employees or others desiring to do business with plaintiff and from otherwise interfering with the operation of the plaintiff's business should be terminated.

It Is, Therefore, by the Court Considered, Adjudged and Decreed that the defendants, their officers, agents, servants,

employees and attorneys, and all those persons in active concert or participation with them be, and they are hereby enjoined and restrained pursuant to Rule 65(b) from picketing plaintiff's processing plants at Pine Bluff, Arkansas, and Waldron, Arkansas, and from carrying on concerted strike activity at the Pine Bluff and Waldron processing plants in violation of the Article XIV of each of the contracts covering the employees of the Pine Bluff and Waldron plants.

It Is Furthered Ordered, Adjudged and Decreed that the temporary restraining order entered on the 2nd day of July, 1974, enjoining and restraining the defendants from threatening or committing acts of intimidation or violence is hereby dissolved.

Signed this 31st day of July, 1974.

/s/ OREN HARRIS
District Judge

(3) Ruling of the United States Court of Appeals for the Eighth Circuit Filed July 29, 1975

United States Court of Appeals
For the Eighth Circuit

No. 74-1660

Valmac Industries, Inc., Appellee, v. Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO; Jess Riley, Jerry McGee, Darlene Hartley, Bill Green, Benny Dollar and Sarah Carlisle, Appellants.	Appeal from the United States District Court for the Eastern District of Arkansas.

Submitted: February 13, 1975

Filed: July 29, 1975

Before Heaney and Webster, Circuit Judges, and Nangle, District Judge.*

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* The Honorable John F. Nangle, United States District Judge, Eastern District of Missouri, sitting by designation.

Webster, Circuit Judge.

In *Boys Markets, Inc. v. Retail Clerks Local 770*, 398 U.S. 235 (1970), the Supreme Court held that, notwithstanding the anti-injunction provisions of the Norris-LaGuardia Act,[1] under appropriate circumstances a federal court may enjoin a strike or work stoppage pending arbitration of a labor dispute arising under a collective bargaining agreement containing no-strike and arbitration clauses. In this appeal, we are asked to determine whether a *Boys Markets* injunction may be issued when the work stoppage occurred not as the result of an independent contract dispute but rather because one group of employees honored a union picket line established by another group of employees covered under a separate collective bargaining agreement. We also consider whether the company may obtain such an injunction without submitting the work stoppage issue to binding arbitration. The specific controversy before us arose from the following facts:

Valmac Industries, Inc. operates four poultry-processing plants, each in a different town in Arkansas. Each plant was governed by a separate collective bargaining agreement between Valmac and Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, the exclusive bargaining representative of certain employees at each plant.

Employees at the Valmac plants at Russellville and Dardanelle went on strike when both their collective bargaining agreements expired on June 29, 1974. On July 1 and 2, striking employees from those plants established picket lines

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[1] 29 U.S.C. § 104.

at Valmac's two other facilities in Waldron and Pine Bluff.[2] They carried picket signs that were informational in nature.[3]

The employees at the Waldron and Pine Bluff plants honored the picket lines and refused to work. Although the Waldron and Pine Bluff labor contracts which were then still in effect specifically permitted individual employees to honor authorized union picket lines,[4] these same collective bargaining agreements contained express no-strike clauses.[5] Proceeding on the theory that the resulting work stoppages at Waldron and Pine Bluff were in violation of such no-strike provisions, Valmac sought preliminary injunctive relief in the United States District Court for the Eastern District of Arkansas.[6]

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[2] Russellville and Dardanelle are in close proximity, though situated on opposite sides of the Arkansas river. Pine Bluff is approximately 125 miles away to the southeast, and Waldron approximately 60 miles to the southwest.

[3] The picket signs read:

"Valmac Industries, Inc."
Russellville and Dardanelle,
Arkansas on strike
Foodhandlers Local Union 425.

[4] Article XV of the collective bargaining agreements in effect at the Waldron and Pine Bluff plants provides:

> It shall not be a violation of this Agreement for an employee to refuse to pass through a picket line authorized by this Union.

[5] Article XIV of the Waldron and Pine Bluff contracts states:

> During the whole period this Agreement is in effect, the Company shall not lockout its employees and the Union shall not authorize or sanction any strike, stoppage, slow-down or suspension of work against the Company, except for failure of the other party to submit to the arbitration procedure as provided for in Article V of this Agreement, and only then upon forty-eight (48) hours written notice to the other party, and the other party's continued failure to submit to arbitration.

[6] The jurisdiction of the District Court was predicated on Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a):

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Following an ex parte hearing before Judge Oren Harris, a temporary injunction was issued on July 2, 1974. After a subsequent hearing at which both parties were represented, a preliminary injunction issued on August 1, 1974, which barred the union from further picketing at Waldron and Pine Bluff and from carrying on concerted strike activity there. The parties, however, were not expressly ordered to submit their dispute to arbitration. The union appeals, asking us to decide whether the relief granted exceeds the purportedly narrow exception to the anti-injunction provisions of the Norris-LaGuardia Act set forth in *Boys Markets, supra.*

I

The issue presented here has caused division in the circuits. Under similar factual circumstances those jurusdictions which have held the court was without jurisdiction to enjoin the work stoppage have concluded that the work stoppage must be one which is "*over* a grievance which both parties are contractually bound to arbitrate," 398 U.S. at 254 (emphasis added), before the narrow exception recognized in *Boys Markets* can attach. *Buffalo Forge Co. v. United Steelworkers,* No. 74-2698 (2d Cir., May 1, 1975); *Amstar Corp. v. Amalgamated Meat Cutters,* 468 F.2d 1372 (5th Cir. 1972); *Carnation Co. v. Teamsters Local 949,* 86 LRRM 3012 (S.D. Tex. 1974); *General Cable Corp. v. IBEW Local 1644,* 331 F. Supp. 478 (D. Md. 1971); *Simplex Wire and Cable Co. v. Local 2208, IBEW,* 314 F. Supp. 885 (D. N.H. 1970). If this were not so, it is contended, any work stoppage would be subject to an injunction where the collective bargaining agreement contains a no-strike provision.

On the other hand, those jurisdictions which have approved injunctions where the work stoppage itself is the question to be arbitrated have stressed the dominant policy favoring the peaceful settlement of labor disputes by means of binding arbitration and have suggested that to limit the scope of *Boys Markets* to grievances entirely independent of the underlying work stoppage would leave the employer helpless to compel the union to honor its agreement to arbitrate rather than to strike. *Armco Steel Corp. v. UMW*, 505 F.2d 1129 (4th Cir. 1974); *Inland Steel Co. v. Local 1545, UMW*, 505 F.2d 293 (7th Cir. 1974); *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926*, 502 F.2d 321 (3d Cir.) (en banc), *cert. denied*, 95 S. Ct. 625 (1974); *Wilmington Shipping Co. v. Longshoremen*, 86 LRRM 2846 (4th Cir. 1974); *Pilot Freight Carriers, Inc. v. Teamsters Union*, 497 F.2d 311 (4th Cir.), *cert. denied*, 419 U.S. 869 (1974); *Monongahela Power Co. v. Local 2332, IBEW*, 484 F.2d 1209 (4th Cir. 1973); *Bethlehem Mines Corp. v. UMW*, 375 F. Supp. 980 (W.D. Pa. 1974); *Barnard College v. Transport Workers Union*, 372 F. Supp. 211 (S.D.N.Y. 1974); *General Cable Corp v. IBEW Local 1798*, 333 F. Supp. 331 (W.D. Tex. 1971); *cf. Northwestern Airlines, Inc v. Airline Pilots Association*, 442 F.2d 246 (8th Cir. 1970). *modified on rehearing*, 442 F.2d 251, *cert. denied*, 404 U.S. 871 (1971) (work stoppage caused by refusal to cross sister union's picket line held arbitrable dispute under Railway Labor Act). As the Third Circuit observed in a different context:

> The 'no-strike' clause is the quid pro quo which [the Company] obtained for agreeing to submit to compulsory arbitration, and the Union agreed to forbear from striking in order to require such arbitration. To allow the Union to abandon its remedy of arbitration in order to disregard the 'no-strike' clause would render the collective bargaining agreement illusory and would subvert the policy favoring the peaceful settlement of labor disputes by arbitration.
>
> *Avco Corp. v. Local 787, UAW*, 459 F.2d 968, 972 (3d Cir. 1972).

The congressional policy favoring arbitration as a means of resolving industrial disputes was firmly recognized in the *Steelworkers Trilogy*:[7]

> Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement.
>
> *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581 (1960).

In *Boys Markets, supra*, the Supreme Court recognized that the congressional policy favoring arbitration of labor disputes[8] would be frustrated unless the federal courts possessed the power to compel arbitration (1) where an agreement to arbitrate the dispute in question could be found (2) under circumstances in which an injunction would have been proper but for the provisions of the Norris-LaGuardia Act. 398 U.S. at 253-54. More recently, in *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974), the Supreme Court applied the "presumption of arbitrability," 414 U.S. at 379, to safety disputes, where such disputes are not excluded from the arbitration clause of the collective bargaining agreement. The Supreme Court found a no-strike obligation to be implied by the arbitration provision and held that the safety dispute in issue presented a substantial question of contract construction. Concluding that such premises were sufficient to support the issuance of an injunction barring a work stoppage which had arisen over the safety dispute, the

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[7] *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *Steelworkers v. American Mfg. Corp.*, 363 U.S. 564 (1960).

[8] *See* 29 U.S.C. § 173(d).

Court rejected any approach which would have allowed the union to make its own subjective evaluation of safety conditions in order to invoke a statutory exception to an implied no-strike agreement, saying:

> * * * Absent the most explicit statutory command, we are unwilling to conclude that Congress intended the public policy favoring arbitration and peaceful resolution of labor disputes to be circumvented by so slender a thread as subjective judgment, however honest it may be.
>
> 414 U.S. at 386.

In this case the union contends there was no violation of the collective bargaining agreement because Article XV specifically permits employees to refuse to pass through a picket line authorized by the union. The company, on the other hand, contends that the no-strike provisions of the contract preclude the union from using picket lines to cause a work stoppage. Therein lies the heart of the dispute, and disputes arising under the collective bargaining agreement are subject to arbitration. The binding arbitration provisions relate to any grievance "involving an interpretation, application or violation of [the] Agreement * * *." There can be little doubt that had the company protested the picket line before the work stoppage occurred the resulting dispute would have been subject to binding arbitration.[9] It makes little sense to argue that because the work stoppage precipitated the dispute it was not a work stoppage "over" a grievance which the parties were contractually bound

[9] Likewise, if the company attempted to discipline employees who honored the picket line, the union could file a grievance and compel the company to arbitrate. *See Bethlehem Mines Corp. v. UMW*, 375 F. Supp. 980, 983 (W.D. Pa. 1974). The company would have us ignore the authorized picket line clause and hold that the dispute was over the no-strike clause alone. We decline to adopt so broad an interpretation of *Boys Markets* or of *NAPA* and *Monongahela*, especially since the establishment of the picket lines is as much a part of the arbitrable dispute as the fact that employees honored it.

to arbitrate. We think the holdings in *NAPA* and *Monongahela* and their progeny are consistent with a congressional purpose to encourage settlement of disputes by arbitration, including situations in which purported exceptions to a no-strike clause under the collective bargaining agreement are in dispute. Injunctive relief, conditioned upon prompt[10] arbitration of the dispute, does not nullify the union's right to establish or honor a picket line; it "only suspends the exercise of the right until its existence is established by an arbitrator's decision." *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926 supra*, 502 F.2d at 324.

The teachings of the Supreme Court lead us to the conclusion that if (1) the dispute is arguably one which can be resolved by arbitration (we think it is) and (2) the dispute has not been excluded from the scope of the arbitration clause (we hold that it has not), an injunction is proper to safeguard arbitration as the method selected by the parties for the resolution of disputes, provided other common law principles of equity enumerated in *Boys Market, supra*, 398 U.S. at 254, are present.

II

The company, which had originally demanded arbitration, refused to go forward following the grant of the injunction, contending that the District Judge had "already decided" the arbitrable issue. The company thereby attempted to make capital out of the District Court's remark from the bench that "there is nothing between the union and the company to arbitrate as a grievance on either Waldron or Pine Bluff * * *." This assessment was error.

[10] We stress the need for promptness. Unless the District Court so conditions its order that arbitration must closely follow the issuance of the injunction, the economics of the situation rather than the merits of the dispute may decide the outcome, and the union may have been unfairly denied its right to engage in authorized activity. *Boys Markets* was not intended to permit such a result.

While an arbitrable dispute will support the issuance of an injunction where a no-strike provision is found or implied in a collective bargaining agreement and a work stoppage has occurred, it does not follow that the company may abandon its demand for arbitration upon obtaining injunctive relief. The *purpose* of the injunction, indeed its only justification as an exception to the Norris-LaGuardia Act provisions, is to suspend the work stoppage in order to permit the dispute to be resolved by means of arbitration. *Boys Markets* expressly requires the District Court to condition the issuance of its injunction upon compliance with an order to arbitrate. 398 U.S. at 254.[11]

In other respects, however, the District Court substantially applied the proper standard in determining that the issuance of an injunction would be appropriate "despite the Norris-LaGuardia Act."[12] The findings that the union was in apparent violation of the no-strike provisions, that the company had a substantial probability of success in its lawsuit and that the irreparable harm to the company outweighed any damages which the union might suffer as a result of the injunction are supported by the evidence and are not clearly erroneous. But this is not enough to underpin the injunction. The District Court must find the dispute arbitrable and condition the continuance of the injunction upon an express order to arbitrate. It was error to do otherwise. *Cf. Inland Steel Co. v. Local 1545, UMW, supra,* 505 F.2d at 300.

We therefore remand the case to the District Court with instructions to require the dispute be submitted to arbitration

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[11] The no-strike obligation is the *quid pro quo* for an agreement to arbitrate. *Boys Markets, Inc. v. Retail Clerks Local 770,* 398 U.S. 235, 248 (1970); *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448, 455 (1957). A willingness to arbitrate becomes a threshold requirement of one's seeking to enforce the corresponding part of the bargain.

[12] *Boys Markets, Inc. v. Retail Clerks Local 770,* 398 U.S. 235, 254 (1970).

within ten days following our mandate as a condition of its injunction, and to frame the issue for arbitration.[13]

While the passage of time has resulted in new collective bargaining agreements, the company's claim for monetary damages caused by the alleged breach remains unresolved. Liability thereunder must await the determination of the arbitrator. *See Drake Bakeries, Inc. v. Local 50, American Bakery Workers,* 370 U.S. 254 (1962).

Remanded for further proceedings in accordance with these instructions.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

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[13] In its July 12, 1974, letter the company framed the dispute in this way:

> On July 1, 1974, we previously requested that you take immediate action to discontinue the picketing and strike activity which was commenced at the Pine Bluff and Waldron plants on July 1, 1974. When the request was not honored, a Temporary Restraining Order was entered by the United States District Court.
>
> You are advised that the Company stands ready and willing to arbitrate in accordance with the terms of the Collective Bargaining Agreement covering the employees at those plants, any grievance which may have caused the work stoppage.
>
> The Company regards the work stoppage and strike activity of the Union and employees as a violation of Article XIV of each of the contracts. If you disagree then we demand that the matter be submitted to arbitration in accordance with Article V of each of the agreements.

The union framed the dispute in this way:

> Whether the honoring of picket lines established and authorized by Food Handlers Local 425 at plaintiff's Pine Bluff and Waldron, Arkansas, operations by employees of Plaintiff employed by it at each of those operations constituted a violation of the existing collective bargaining contract between plaintiff and Food Handlers Local 425 at each of those operations.

(4) ORDER DENYING PETITION FOR REHEARING EN BANC AND FOR REHEARING

United States Court of Appeals
for the Eighth Circuit

No. 74-1660 September Term, 1974

Valmac Industries, Inc.,
Appellee,

vs.

Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO; Jess Riley, Jerry McGee; Darlene Hartley; Bill Green; Benny Dollar and Sarah Carlisle,
Appellants.

Appeal from the United States District Court for the Eastern District of Arkansas.

The Court having considered petition for rehearing en banc filed by counsel for appellants and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

August 20, 1975

(5) NORRIS-LaGUARDIA ACT, 29 U.S.C. § 104

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions.

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as those terms are herein defined) from doing, whether single or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Mar. 23, 1932, c. 90, § 4, 47 Stat. 70.

(6) LABOR MANAGEMENT RELATIONS ACT OF 1947, AS AMENDED

SUBCHAPTER IV—LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§ 185. Suits by and against labor organizations—Venue, amount, and citizenship.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.